

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
SOUTHWESTERN DIVISION**

Leroy K. Wheeler,)	
)	
Plaintiff,)	
)	ORDER DENYING MOTION
vs.)	TO STAY PENDING APPEAL
)	
Robyn T. Schmalenberger, Patrick Branson,)	
and Leann K. Bertsch,)	
)	Case No. 1:11-cv-079
Defendants.)	

Before the court is a “Request for a Stay of the Proceedings” filed by Plaintiff Leroy K. Wheeler. Wheeler, an inmate at the North Dakota State Penitentiary, initiated this action by filing an application to proceed *in forma pauperis* and a proposed complaint on October 11, 2011. On February 21, 2012, the court issued an order permitting Wheeler to proceed with his claims of retaliation for exercising constitutional rights and retaliation for exercising his religious right to be an informant to the extent that Wheeler alleged he was disciplined in retaliation for exercising his constitutional rights. On December 20, 2012, this court issued an order denying Wheeler’s motion for a preliminary injunction enjoining defendants from opening Wheeler’s legal mail outside his presence. On December 27, 2012, Wheeler filed a motion to stay the proceedings in this court while his interlocutory appeal of this court’s order denying his motion for a preliminary injunction was pending at the Eighth Circuit Court of Appeals.

An interlocutory appeal from an order granting or denying a preliminary injunction divests the district court of jurisdiction over the matters involved in the appeal, but the district court retains jurisdiction over all other matters. W. Pub. Co. v. Mead Data Cent., Inc., 799 F.2d 1219, 1229 (8th

Cir. 1986) (“[T]he pendency of an interlocutory appeal from an order granting or denying a preliminary injunction does not wholly divest the District Court of jurisdiction over the entire case.”); Janousek v. Doyle, 313 F.2d 916, 920 (8th Cir. 1963) (“[An] appeal . . . from an interlocutory order denying a motion for preliminary injunction . . . and the filing of the notice of appeal from such an order does not ipso facto divest the district court of jurisdiction to proceed with the cause with respect to any matter not involved in the appeal, or operate to automatically stay other proceedings in the cause pending the appeal.”). This court retains jurisdiction over the issues not involved in Wheeler’s interlocutory appeal. Wheeler’s Motion to Stay Pending Appeal (Docket No. 69) is **DENIED** because he has not shown good cause for requiring a stay and due to the frivolity of his request for a preliminary injunction and his appeal.

Dated this 30th day of April, 2013.

/s/ Charles S. Miller, Jr.
Charles S. Miller, Jr.
United States Magistrate Judge